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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 JANE DOES, individually and on  
4 behalf of all others similarly  
situated

5 Plaintiffs

6 v.

22 Civ. 10019 (JSR)  
Conference

7 JP MORGAN CHASE BANK N.A.

8 Defendants

9 -----x  
10 New York, N.Y.  
11 June 26, 2023  
5:30 p.m.

12 Before:

13 HON. JED S. RAKOFF

14 District Judge

15 APPEARANCES

16 BOIES SCHILLER & FLEXNER LLP  
Attorneys for Plaintiffs

17 DAVID BOIES  
18 SIGRID S. McCAWLEY  
ANDREW VILLACASTIN  
DANIEL CRISPINO

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21 WILMER CUTLER PICKERING HALE & DORR LLP  
22 Attorneys for Defendants  
23 FELICIA H. ELLSWORTH  
BOYD M. JOHNSON III

24 MOTLEY RICE LLC  
Attorney for United States Virgin Islands  
25 WILLIAM H. NARWOLD

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(In open court; case called)

DEPUTY CLERK: Will everyone please be seated and will the parties please identify themselves for the record.

MR. BOIES: Good afternoon, your Honor.

David Boies of Boies Schiller & Flexner, counsel for plaintiff. With me at counsel table are my colleagues, Sigrid McCawley from my firm, Brittany Henderson from Edwards Henderson. Andrew Villacastin from Boies Schiller and Daniel Crispino from Boies Schiller.

THE COURT: Good afternoon.

MS. ELLSWORTH: Good afternoon, your Honor.

Felicia Ellsworth from Wilmer Hale for defendant JP Morgan. With me is Boyd Johnson.

MR. NARWOLD: Good afternoon, your Honor. Bill Narwold, Motely Rice. We are counsel for the U.S. Virgin Islands in the consolidated case.

THE COURT: Good afternoon.

So this is a hearing to address preliminary approval of the class action settlement in the case involving Jane Doe v. JP Morgan, and I have already very carefully reviewed the papers and find that so far, as preliminary approval is concerned, all the Rule 23 requirements and all the *Grinnell* requirements are fully satisfied, and the notice, I'm glad to see, has a very good description of the class, so I am glad we were able to work that out.

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1           There were only two questions I had. The first is the  
2 parties recommend that Simone Lelchuk be the claims  
3 administrator, and, of course, she was who I selected in the  
4 Deutsche Bank settlement after looking at the other two  
5 candidates, who were very well qualified as well. Although  
6 they were retired judges, but notwithstanding that, they were  
7 very well qualified.

8           But I wanted to be sure that if I appointed  
9 Ms. Lelchuk here, which makes a lot of sense, that her fees  
10 would be the same as in the Deutsche Bank case because that was  
11 one of the factors that led to my appointing her, which is that  
12 her fees were less than her two competitors, so to speak.

13           Is that the case or have you checked that with her?

14           MR. BOIES: That is the case, your Honor.

15           THE COURT: Very good. So I will appoint her.

16           The other question I had was in the Deutsche Bank  
17 settlement, every victim who qualified was guaranteed I think  
18 it was \$75,000, and here there is no such minimum guarantee so  
19 to speak. Why not?

20           MR. BOIES: Your Honor, the \$75,000 was designed for  
21 what we thought were the particular circumstances of the  
22 Deutsche Bank settlement. And I think we talked about at the  
23 time of preliminary approval of that settlement. Because of  
24 the nature of Mr. Epstein's sex trafficking during the period  
25 of time that he was banking with Deutsche Bank, almost all of

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1 the victims were people who had come from Russia and Eastern  
2 Europe. We did not have as good an ability to contact them,  
3 and, in addition to that, for a variety of cultural  
4 circumstances, we were very concerned they would not respond  
5 simply to a notice from the court, and we wanted to (A) --

6 THE COURT: You thought \$75,000 might be an incentive?

7 MR. BOIES: Exactly, your Honor. And we did not think  
8 that that was necessary with respect to the people covered by  
9 this class, which are predominantly people in the United  
10 States, and we thought a more traditional class allocation  
11 program was more appropriate.

12 THE COURT: Let me ask you this: Supposing the claims  
13 administrator awards X amount to one victim and a lesser amount  
14 to some other victim, and that other victim feels they're  
15 similarly situated, as I understand the proposed settlement,  
16 they have no remedy. Is that right?

17 MR. BOIES: That is right, your Honor. The way it was  
18 done in the Deutsche Bank settlement, and here, and in other  
19 settlements like this, is that a qualified claims administrator  
20 makes these very difficult choices in terms of allocating  
21 portions of the settlement fund to various survivors. It would  
22 be, I think, very difficult administratively to set up a  
23 detailed appeal process, for example. It is not impossible,  
24 but both with respect to what we've done in the past, what was  
25 done in the Epstein estate claims process, the approach was the

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1 approach that we've taken here.

2 THE COURT: Well, I accept that, and it makes sense  
3 because to set up an appellate process I think would be just a  
4 waste of the settlement money, as well as delay probably  
5 greatly the process. But I may reserve the right, and I don't  
6 think we need to put this into any formal order, but to  
7 periodically take a look at how the claims administrator is  
8 making her decision just so that I can feel totally comfortable  
9 that everything is proceeding well. So I just mention that,  
10 and you can convey that to her.

11 MR. BOIES: I will, your Honor. Our view is that this  
12 all continues under the Court's jurisdiction.

13 THE COURT: Very good.

14 So I'm going to approve -- preliminarily approve the  
15 settlement. I'll issue an order tomorrow which will include  
16 all the relevant dates. I say that having been apprised today  
17 that I got one or two of the dates wrong in the Deutsche Bank  
18 settlement, but you know I only have ten fingers. But  
19 hopefully we will fix that tomorrow as well. Hopefully I will  
20 get the dates right this time.

21 Anything else we need to take up today?

22 MR. BOIES: Not from us, your Honor.

23 THE COURT: Anything from the defense?

24 MS. ELLSWORTH: Nothing from JP Morgan.

25 MR. NARWOLD: Your Honor, Bill Narwold from Motley

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1 Rice for the U.S. Virgin Islands. I simply wanted to alert the  
2 Court and the parties of an issue that may come up down the  
3 road, and that's the following: The settlement agreement --  
4 let me start by saying we're very supportive of this settlement  
5 and getting relief.

6 THE COURT: I have to say I am impressed by the  
7 settlement. I might even possibly consider the extraordinary  
8 attorneys' fee recommendation of counsel. But anyway, go  
9 ahead.

10 MR. NARWOLD: The issue I wanted to raise, your Honor,  
11 is this: There is in this settlement agreement --

12 THE COURT: Hold on. Maybe go to the podium.  
13 Something is wrong your microphone for some reason.

14 MR. NARWOLD: The issue is this, your Honor: In this  
15 settlement agreement, unlike in the Deutsche Bank settlement  
16 agreement, there is a provision that relates to the release,  
17 and the release language that is in this settlement agreement  
18 could be read to purport to release claims of sovereigns, not  
19 only the U.S. Virgin Islands but other sovereigns as well. And  
20 it is very likely that the U.S. Virgin Islands will object to  
21 that provision at the time of final approval. I think it's  
22 also possible because of the cap and notice provisions that  
23 other attorney generals may as well. This issue of trying  
24 to --

25 THE COURT: You want to point me to the language?

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1 MR. NARWOLD: Sure. It's the settlement agreement  
2 itself or the stipulation of settlement. It's paragraph 1.25,  
3 which is actually a definitional provision but it contains the  
4 language that is --

5 THE COURT: Let me just take a quick look. So I see,  
6 although Section 1.25 was obviously authored by William  
7 Faulkner, since the sentences run on interminably, but,  
8 nevertheless, I see how broad they are. So thank you for  
9 raising that.

10 I don't know if plaintiff's counsel or defense counsel  
11 wanted to say anything about it now.

12 MR. BOIES: We can address it at whatever time the  
13 Court would like us to, your Honor. This, although it is very  
14 broad in terms of the people covered, it is limited to damages  
15 collected or sought to be collected on behalf of a member of  
16 the class. This is not intended to, and I don't think we have  
17 the power to, influence what Virgin Islands or what any other  
18 sovereign does in its sovereign capacity.

19 THE COURT: So, if that's the case, why don't you add  
20 some language to that effect?

21 MR. BOIES: We thought that on behalf of a member --  
22 what it says is: Brought to recover damages from the released  
23 defendant parties on behalf of a member of the class.

24 THE COURT: Well, that may be sufficient. I'm not  
25 making any determination now, but what I would suggest is that

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1 counsel confer with counsel for the Virgin Islands and whether  
2 anything needs to be -- you know, I could conceive, for  
3 example, at the time of final approval making a more formal  
4 statement with the approval of all parties that this does not  
5 include X or something like that, but we don't need to reach  
6 that today.

7 MR. BOIES: For example, as I understand it, your  
8 Honor, if the State of New York or the Virgin Islands or any  
9 other governmental entity were to sue JP Morgan --

10 THE COURT: The state of New York or the Virgin  
11 Islands, you like to deal in extremes, I see.

12 MR. BOIES: Well, fall and winter, yeah. I don't  
13 think there's anything that we intend to or could do to stop  
14 that, but if what they were doing was saying we're going to  
15 collect damages --

16 THE COURT: Yes, that's clearly the -- so, I'm sorry  
17 go ahead.

18 MS. ELLSWORTH: Your Honor, may I? I agree with what  
19 Mr. Boies said in terms of the limitation that's placed on this  
20 clause. It's only to the extent that a sovereign is seeking  
21 damages on behalf of a class member for that class member's  
22 injuries, so those are the limitations.

23 I would also note that it says to the maximum extent  
24 permitted by law, so we baked in there the idea that to the  
25 extent that there is some argument that a sovereign like



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1 Mr. Narwold's client or anyone else would make at the  
2 appropriate time about this release were it to be proffered  
3 against them, that would be the time to interpret it. So I  
4 just wanted to add that one additional point.

5 THE COURT: Let me ask Virgin Islands counsel.

6 So the damages you were seeking, assuming for the sake  
7 of argument that this and the Deutsche Bank settlement are  
8 finally approved, are damages for the Virgin Islands. Yes?

9 MR. NARWOLD: They are, but they're also under 1595(d)  
10 all appropriate relief can be relief that we can in our view  
11 obtain on behalf of class; for example, punitive damages, civil  
12 penalties. And what this provision does, is it prohibits class  
13 members from being allowed to participate.

14 So if we, for example, had a recovery, and we decided  
15 that a portion of that recovery should also go to the victims,  
16 the class members, this provision would prohibit us or  
17 arguably -- not prohibit us, but prohibit the class member from  
18 participating in that distribution which I don't think they do.  
19 But let me give you a real world --

20 THE COURT: But I'm just trying to think of this in  
21 practical terms. I mean, here we have two very large  
22 settlements. The victims on almost any analysis are going to  
23 receive a substantial amount of money. No, now amount of money  
24 can compensate them for the crimes that were committed against  
25 them by Mr. Epstein, but, nevertheless, what point would there

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1 be in having the Virgin Islands say, well, we're going to take  
2 a little bit of what we got for the injuries that were visited  
3 on the Virgin Islands and add that to what the victims got,  
4 even though they have agreed through the settlement to release  
5 JP Morgan from any further recovery. I don't understand why  
6 that would in practical terms make any sense.

7 MR. NARWOLD: Let me give you a real world example  
8 that I think will happen here.

9 This is a claims-made settlement, but the entire class  
10 is giving a release. I think we know, given the history of  
11 these kinds of cases, that we're not going to see every victim  
12 file a claim. I hope they do, and I hope that solves that  
13 problem, but I don't think all 250 or 300 victims will file.  
14 Many of them are foreign nationals. Many of them are going to  
15 be difficult to find, despite all the efforts on notice.

16 What's going to happen is those individuals will  
17 receive no compensation, and they will have released all of  
18 their claims. I think the Virgin Islands is entitled to  
19 protect that.

20 THE COURT: You've raised some interesting points,  
21 which I need to consider. I do think the time to raise this --  
22 I mean, you will talk with each other -- but is at the time of  
23 objections to the final approval of the settlement, so not in  
24 some subsequent time thereafter. We might as well deal with  
25 this issue upfront and not have it hanging over us for years.

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1 So I will look forward to -- if you can't work it out  
2 otherwise, I'll look forward to hearing from you then.

3 MR. NARWOLD: Thank you, your Honor.

4 THE COURT: Anything else anyone wants to raise?

5 MR. BOIES: Not from us, your Honor.

6 MS. ELLSWORTH: No, your Honor.

7 THE COURT: Very good. So I do want to say I really  
8 do think, thanks to counsel for both sides, that this is a  
9 really fine settlement, and of course I will wait to hear what  
10 objections, if any, are filed, but I congratulate counsel on  
11 their excellent work. And that adjourns this proceeding.

12 (Adjourned)